

COMMITTEE REPORT

MADAM PRESIDENT:

The Senate Committee on Appropriations, to which was referred Engrossed House Bill No. 1637, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

- 1 Page 1, between the enacting clause and line 1, begin a new
- 2 paragraph and insert:
- 3 "SECTION 1. IC 24-5.5-1-1, AS ADDED BY P.L.209-2007,
- 4 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 5 JULY 1, 2009]: Sec. 1. **Except for IC 24-5.5-3**, this article does not
- 6 apply to the following:
- 7 (1) A person organized or chartered under the laws of this state,
- 8 any other state, or the United States that relate to a bank, a trust
- 9 company, a savings association, a savings bank, a credit union, or
- 10 an industrial loan and investment company.
- 11 (2) The Federal National Mortgage Association, the Federal
- 12 Home Loan Mortgage Corporation, or a Federal Home Loan
- 13 Bank.
- 14 (3) A department or agency of the United States or of Indiana.
- 15 (4) A person that is servicing or enforcing a loan that it owns.
- 16 (5) A person that is servicing a loan:
- 17 (A) for a person described in subdivisions (1) through (4); ~~of~~
- 18 ~~this section~~; or
- 19 (B) insured by the Department of Housing and Urban

1 Development or guaranteed by the Veterans Administration.
 2 (6) An attorney licensed to practice law in Indiana who is
 3 representing a mortgagor.

4 SECTION 2. IC 24-5.5-3-1, AS ADDED BY P.L.209-2007,
 5 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 6 JULY 1, 2009]: Sec. 1. **Subject to IC 32-30-10.5 with respect to first**
 7 **lien mortgage transactions and** in addition to any other notice
 8 required by law, a mortgagee, or the mortgagee's assignee, that
 9 proceeds under IC 32-30-10 to foreclose a mortgage or deed of trust
 10 shall, at the time of filing the complaint in the action, provide the
 11 following written notice to the mortgagor in a statement printed in at
 12 least 14 point boldface type:

13 "NOTICE REQUIRED BY STATE LAW
 14 Mortgage foreclosure is a complex process. People may
 15 approach you about "saving" your home. You should be
 16 careful about any such promises. There are government
 17 agencies and nonprofit organizations you may contact for
 18 helpful information about the foreclosure process. For the
 19 name and telephone number of an organization near you,
 20 please call the Indiana housing and community development
 21 authority."

22 Service of the written notice required by this chapter shall be made as
 23 provided in the Indiana Rules of Trial Procedure governing service of
 24 process upon a person.

25 SECTION 3. IC 24-5.5-5-7 IS ADDED TO THE INDIANA CODE
 26 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 27 1, 2009]: Sec. 7. **A foreclosure consultant shall retain all records**
 28 **and documents related to services performed on behalf of a**
 29 **homeowner for at least three (3) years after the termination or**
 30 **conclusion of a contract with the homeowner.**

31 SECTION 4. IC 24-9-2-12.5 IS ADDED TO THE INDIANA CODE
 32 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 33 1, 2009]: Sec. 12.5. **"Real estate transaction" has the meaning set**
 34 **forth in IC 25-34.1-10-8.**

35 SECTION 5. IC 24-9-3-7, AS AMENDED BY P.L.141-2005,
 36 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 37 JULY 1, 2009]: Sec. 7. A person may not:

38 (1) divide a loan transaction into separate parts with the intent of

1 evading a provision of this article;

2 (2) structure a home loan transaction as an open-end loan with the
3 intent of evading the provisions of this article if the loan would be
4 a high cost home loan if the home loan had been structured as a
5 closed-end loan; or

6 ~~(3) engage in a deceptive act in connection with a:~~

7 ~~(A) home loan; or~~

8 ~~(B) loan described in IC 24-9-1-1.~~

9 **(3) engage or solicit to engage in a real estate transaction or**
10 **a consumer credit mortgage transaction without a permit or**
11 **license required by law; or**

12 **(4) represent that a real estate transaction or a consumer**
13 **credit mortgage transaction has sponsorship, approval,**
14 **performance, characteristics, accessories, uses, or benefits**
15 **that:**

16 **(A) the real estate transaction or consumer credit**
17 **mortgage does not have; and**

18 **(B) the person knows or reasonably should know the real**
19 **estate transaction or consumer credit mortgage does not**
20 **have.**

21 SECTION 6. IC 25-1-11-17 IS AMENDED TO READ AS
22 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 17. A practitioner may
23 petition the board to accept the surrender of the practitioner's license
24 instead of having a hearing before the board. The practitioner may not
25 surrender the practitioner's license without the written approval of the
26 board, and the board may impose any conditions appropriate to the
27 surrender or reinstatement of a surrendered license. **The board may**
28 **not accept the surrender of a practitioner's license if the office of**
29 **attorney general:**

30 **(1) has filed an administrative complaint concerning the**
31 **practitioner's license; and**

32 **(2) opposes the surrender of the license.**

33 SECTION 7. IC 25-1-11-18, AS AMENDED BY P.L.194-2005,
34 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
35 JULY 1, 2009]: Sec. 18. A practitioner who has been subjected to
36 disciplinary sanctions may be required by a board to pay the costs of
37 the proceeding. The practitioner's ability to pay shall be considered
38 when costs are assessed. If the practitioner fails to pay the costs, a

suspension may not be imposed solely upon the practitioner's inability to pay the amount assessed. These costs are limited to costs for the following:

- (1) Court reporters.
- (2) Transcripts.
- (3) Certification of documents.
- (4) Photo duplication.
- (5) Witness attendance and mileage fees.
- (6) Postage.
- (7) Expert witnesses.
- (8) Depositions.
- (9) Notarizations.
- (10) Administrative law judges.

(11) Real estate appraisals.

SECTION 8. IC 25-34.1-6-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2. (a) A person who:

- (1) performs the acts of a salesperson without a salesperson license;
- (2) performs the acts of a broker without a broker license; or
- (3) conducts, or solicits or accepts enrollment of students for, a course as prescribed in IC 25-34.1-3 without course approval;

commits a Class A infraction. Upon conviction for an offense under this section, the court shall add to any fine imposed, the amount of any fee or other compensation earned in the commission of the offense. Each transaction constitutes a separate offense.

(b) In all actions for the collection of a fee or other compensation for performing acts regulated by this article, it must be alleged and proved that, at the time the cause of action arose, the party seeking relief was not in violation of this section.

(c) The commission may issue a cease and desist order to prevent violations of this section.

- (1) If the commission determines that a person is violating this section, or is believed to be violating this section, the commission may issue an order to that person setting forth the time and place for a hearing at which the affected person may appear and show cause as to why the challenged activities are not in violation of this section.

- (2) After an opportunity for hearing, if the commission determines

1 that the person is violating this section, the commission shall
 2 issue a cease and desist order which shall describe the person and
 3 activities which are the subject of the order.

4 (3) A cease and desist order issued under this section is
 5 enforceable in the circuit courts of this state.

6 (d) The attorney general, the commission, or the prosecuting
 7 attorney of any county in which a violation occurs may maintain an
 8 action in the name of the state to enjoin a person from violating this
 9 section.

10 (e) In charging any person in a complaint for an injunction or in
 11 affidavit, information, or indictment with the violation of the provisions
 12 of this section, it is sufficient, without averring any further or more
 13 particular facts, to charge that the person upon a certain day and in a
 14 certain county either acted as a real estate broker or salesperson not
 15 having a license or conducted, or solicited or accepted enrollment of
 16 students for, a broker or salesperson course without course approval.

17 **(f) A licensee who violates IC 24-5-15 or IC 24-5.5 may be**
 18 **disciplined under IC 25-1-11 and this section.**

19 ~~(f)~~ (g) Each enforcement procedure established in this section is
 20 supplemental to other enforcement procedures established in this
 21 section.

22 SECTION 9. IC 32-30-10-3 IS AMENDED TO READ AS
 23 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 3. (a) **Except as**
 24 **provided in IC 32-30-10.5 for first lien mortgage transactions**, if a
 25 mortgagor defaults in the performance of any condition contained in a
 26 mortgage, the mortgagee or the mortgagee's assigns may proceed in the
 27 circuit court of the county where the real estate is located to foreclose
 28 the equity of redemption contained in the mortgage.

29 (b) If the real estate is located in more than one (1) county, the
 30 circuit court of any county in which the real estate is located has
 31 jurisdiction for an action for the foreclosure of the equity of redemption
 32 contained in the mortgage.

33 SECTION 10. IC 32-30-10-10 IS AMENDED TO READ AS
 34 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 10. A plaintiff may not:

35 (1) proceed to foreclose the mortgagee's mortgage:

36 **(A)** while the plaintiff is prosecuting any other action for the
 37 same debt or matter that is secured by the mortgage; or

38 **(B)** while the plaintiff is seeking to obtain execution of any

- 1 judgment in any other action; ~~or~~
 2 (2) prosecute any other action for the same matter while the
 3 plaintiff is foreclosing the mortgagee's mortgage or prosecuting
 4 a judgment of foreclosure; ~~or~~
 5 **(3) proceed to foreclose a mortgage (as defined in**
 6 **IC 32-30-10.5-5) until the notice under IC 32-30-10.5-8(a) has**
 7 **been sent, if required.**

8 SECTION 11. IC 32-30-10.5 IS ADDED TO THE INDIANA
 9 CODE AS A NEW CHAPTER TO READ AS FOLLOWS
 10 [EFFECTIVE JULY 1, 2009]:

11 **Chapter 10.5. Foreclosure Prevention Agreements for**
 12 **Residential Mortgages**

13 **Sec. 1. (a) The general assembly makes the following findings:**

- 14 **(1) Indiana faces a serious threat to its state economy and to**
 15 **the economies of its political subdivisions because of Indiana's**
 16 **high rate of residential mortgage foreclosures, which**
 17 **constitutes an emergency.**
 18 **(2) Indiana's high rate of residential mortgage foreclosures**
 19 **has adversely affected property values in Indiana, and may**
 20 **have an even greater adverse effect on property values if the**
 21 **foreclosure rate continues to rise.**
 22 **(3) It is in the public interest for the state to modify the**
 23 **foreclosure process to require creditors and debtors to engage**
 24 **in good faith negotiations designed to avoid foreclosure by**
 25 **allowing debtors to repay their mortgages.**

26 **(b) The purpose of this chapter is to avoid unnecessary**
 27 **foreclosures of residential properties and thereby provide stability**
 28 **to Indiana's statewide and local economies by:**

- 29 **(1) requiring early contact and communications between**
 30 **creditors, their authorized agents, and debtors in order to**
 31 **engage in negotiations that could avoid foreclosure; and**
 32 **(2) facilitating the modification of residential mortgages in**
 33 **appropriate circumstances.**

34 **Sec. 2. As used in this chapter, "creditor" refers to:**

- 35 **(1) the creditor (as defined in IC 24-4.4-1-301(2)); or**
 36 **(2) a mortgage servicer;**
 37 **in a first lien mortgage transaction (as defined in**
 38 **IC 24-4.4-1-301(6)).**

1 **Sec. 3.** As used in this chapter, "debtor" refers to the mortgagor
 2 in a first lien mortgage transaction (as defined in
 3 IC 24-4.4-1-301(6)).

4 **Sec. 4.** As used in this chapter, "foreclosure prevention
 5 agreement" means a written agreement that:

- 6 (1) is executed by both the creditor and the debtor; and
- 7 (2) offers the debtor an individualized plan that may include:
 - 8 (A) a temporary forbearance with respect to the mortgage;
 - 9 (B) a reduction of any arrearage owed by the debtor;
 - 10 (C) a reduction of the interest rate that applies to the
 - 11 mortgage;
 - 12 (D) a repayment plan;
 - 13 (E) a deed in lieu of foreclosure;
 - 14 (F) reinstatement of the mortgage upon the debtor's
 - 15 payment of any arrearage;
 - 16 (G) a sale of the property; or
 - 17 (H) any loss mitigation arrangement or debtor relief plan
 - 18 established by federal law.

19 **Sec. 5.** As used in this chapter, "mortgage" refers to a first lien
 20 mortgage transaction (as defined in IC 24-4.4-1-301(6)).

21 **Sec. 6.** As used in this chapter, "mortgage foreclosure
 22 counselor" means a foreclosure prevention counselor who is part
 23 of, or has been trained or certified by, the Indiana Foreclosure
 24 Prevention Network.

25 **Sec. 7.** As used in this chapter, "mortgage servicer" means the
 26 last person to whom:

- 27 (1) a debtor in a mortgage; or
- 28 (2) the debtor's successor in interest;

29 has been instructed to send payments on the mortgage.

30 **Sec. 8. (a)** After June 30, 2009, except as provided in subsection
 31 (d) and section 10(f) of this chapter, before a creditor files an
 32 action for foreclosure, the creditor shall send to the debtor by
 33 certified mail, return receipt requested, a presuit notice in a form
 34 prescribed by the Indiana housing and community development
 35 authority established by IC 5-20-1-3 that informs the debtor that
 36 the creditor intends to initiate a foreclosure and that the debtor
 37 may obtain assistance from a foreclosure counselor and that
 38 provides information on how to contact a housing counselor.

(b) The notice required by subsection (a) shall be sent to:

(1) the address of the mortgaged property; or

(2) the last known mailing address of the debtor if the creditor's records indicate that the mailing address of the debtor is other than the address of the mortgaged property.

(c) Except as provided in subsection (d) and section 10(f) of this chapter, if a creditor files an action to foreclose a mortgage, the creditor shall include with the complaint served on the debtor a notice that informs the debtor of a right to participate in a settlement conference. The notice shall be served with the complaint and in a form prescribed by the Indiana housing and community development authority established by IC 5-20-1-3. The notice must inform the debtor that the debtor may schedule a settlement conference by notifying the court of the debtor's intent to participate in a settlement conference not later than thirty (30) days after the notice is served.

(d) A creditor is not required to send the notices described in this section if:

(1) the loan is secured by a dwelling that is not the debtor's primary residence;

(2) the loan has been the subject of a prior foreclosure prevention plan;

(3) bankruptcy law prohibits the creditor from participating in a settlement conference under this chapter with respect to the loan; or

(4) the court finds that a settlement conference would be of limited value based on the result of a prior loss mitigation effort between the debtor and the creditor.

Sec. 9. (a) After June 30, 2009, a court may not issue a judgment of foreclosure under IC 32-30-10 on a mortgage subject to this chapter unless all of the following apply:

(1) The creditor has given the notice required under section 8(c) of this chapter.

(2) The debtor either:

(A) does not contact the court within the thirty (30) day period described in section (8)(c) of this chapter to schedule a settlement conference under section (8)(c) of this chapter; or

(B) contacts the court within the thirty (30) day period described in section (8)(c) of this chapter to schedule a conference under section (8)(c) of this chapter and, upon the conclusion of the conference, the parties are unable to reach agreement on the terms of a foreclosure prevention agreement.

(b) In a foreclosure action filed under IC 32-30-10-3, the creditor shall attach to the complaint filed with the court a copy of the notice sent to the debtor under section (8)(a) of this chapter.

(c) In a foreclosure action filed after June 30, 2009, the court may not render a judgment of foreclosure until sixty (60) days after the date the notice required by section 8(a) of this chapter was sent unless the mortgaged property is vacant.

Sec. 10. (a) Unless a settlement conference is not required under this chapter, the court shall issue a notice of a settlement conference if the debtor contacts the court to schedule a settlement conference as described in section 8(c) of this chapter. The court's notice of a settlement conference must do the following:

(1) Order the creditor and the debtor to conduct a settlement conference on or before a date and time specified in the notice, which date must not be earlier than twenty-five (25) days after the date of the notice or later than sixty (60) days after the date of the notice, for the purpose of attempting to negotiate a foreclosure prevention agreement.

(2) Require the debtor to contact a mortgage foreclosure counselor before the date of the settlement conference. The notice must provide the contact information for the Indiana Foreclosure Prevention Network.

(3) Require the debtor to bring to the settlement conference the following documents needed to engage in good faith negotiations with the creditor:

(A) Documentation of the debtor's present and future income, expenses, assets, and liabilities, including documentation of the debtor's employment history.

(B) Any other documentation or information that the court determines is needed for the debtor to engage in good faith negotiations with the creditor. The court shall identify any documents required under this clause with enough

1 specificity to allow the debtor to obtain the documents
2 before the scheduled settlement conference.

3 **(4) Require the creditor to bring to the settlement conference**
4 **a complete transaction history for the mortgage upon which**
5 **the mortgage foreclosure action is based.**

6 **(5) Inform the parties that:**

7 **(A) each party has the right to be represented by an**
8 **attorney or assisted by a mortgage foreclosure counselor**
9 **at the settlement conference; and**

10 **(B) an attorney or a mortgage foreclosure counselor may**
11 **participate in the settlement conference in person or by**
12 **telephone.**

13 **(6) Inform the parties that the settlement conference will be**
14 **conducted by telephone on the date and time specified in the**
15 **notice under subdivision (1) unless the parties submit to the**
16 **court a stipulation to modify the date, time, and place of the**
17 **settlement conference.**

18 **(b) The court may require any person that is a party to the**
19 **foreclosure action to appear at or participate in a settlement**
20 **conference held under this section, and, for cause shown, the court**
21 **may order the creditor and the debtor to reconvene a settlement**
22 **conference at any time before judgment is entered.**

23 **(c) At the court's discretion, a settlement conference may or**
24 **may not be attended by a judicial officer.**

25 **(d) The creditor shall ensure that any person representing the**
26 **creditor:**

27 **(1) at a settlement conference scheduled under subsection (a);**
28 **or**

29 **(2) in any negotiations with the debtor designed to reach**
30 **agreement on the terms of a foreclosure prevention**
31 **agreement;**

32 **has authority to conduct negotiations.**

33 **(e) If, as a result of a settlement conference held under this**
34 **section, the debtor and the creditor agree to enter into a**
35 **foreclosure prevention agreement, the agreement shall be reduced**
36 **to writing and signed by both parties, and each party shall retain**
37 **a copy of the signed agreement. Not later than seven (7) business**
38 **days after the signing of the foreclosure prevention agreement, the**

1 creditor shall file with the court a notice indicating that a
 2 foreclosure prevention agreement has been reached. At the election
 3 of the creditor, the foreclosure shall be dismissed or stayed for as
 4 long as the debtor complies with the terms of the foreclosure
 5 prevention plan.

6 (f) If a foreclosure is dismissed and a default in the terms of the
 7 foreclosure prevention plan later occurs, the creditor or its assigns
 8 may bring a foreclosure action without being required to send the
 9 notices described in section 8 of this chapter.

10 (g) Participation in a settlement conference under this section
 11 satisfies any mediation or alternative dispute resolution
 12 requirement established by court rule.

13 Sec. 11. (a) This section applies to a mortgage foreclosure action
 14 with respect to which the creditor has filed the complaint in the
 15 proceeding before July 1, 2009, and the court having jurisdiction
 16 over the proceeding has not rendered a judgment of foreclosure
 17 before July 1, 2009.

18 (b) In a mortgage foreclosure action to which this section
 19 applies, the court having jurisdiction of the action shall serve
 20 notice of the availability of a settlement conference under section
 21 8(c) of this chapter.

22 SECTION 12. IC 32-30-12-1 IS AMENDED TO READ AS
 23 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. **Except as provided**
 24 **in IC 32-30-10.5 for first lien mortgage transactions**, it is not
 25 necessary in any action upon a mortgage or lien to give time for:

- 26 (1) the payment of money; or
- 27 (2) performing any other act.

28 Final judgment may be given in the first instance."

29 Page 2, line 12, delete "A" and insert **"For a mortgage foreclosure**
 30 **action filed after June 30, 2009, and before January 1, 2013, a"**.

31 Page 2, line 13, delete "(IC 33-37-5-30)" and insert **"(IC 33-37-5-30**
 32 **(before its expiration on January 1, 2013))."**.

33 Page 2, line 16, after "30." insert **"(a)"**.

34 Page 2, line 20, delete "mortgage." and insert **"mortgage after June**
 35 **30, 2009, and before January 1, 2013.**

36 **(b) This section expires January 1, 2013."**

37 Page 5, line 21, delete "IC 33-37-5-30." and insert **"IC 33-37-5-30**
 38 **(before its expiration on January 1, 2013)."**

- 1 Page 5, line 32, delete "IC 33-37-5-30;" and insert "**IC 33-37-5-30**
- 2 **(before its expiration on January 1, 2013);**".
- 3 Page 6, line 3, delete "IC 33-37-5-30," and insert "**IC 33-37-5-30**
- 4 **(before its expiration on January 1, 2013),**".
- 5 Renumber all SECTIONS consecutively.
 (Reference is to EHB 1637 as printed March 13, 2009.)

and when so amended that said bill do pass.

Committee Vote: Yeas 9, Nays 2.

Kenley

Chairperson